

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

ZITOVault, LLC,

Plaintiff,

V.

INTERNATIONAL BUSINESS MACHINES
CORPORATION and SOFTLAYER
TECHNOLOGIES, INC.,

Defendants.

Civil Action No. 6:15-cv-906

Judge Rodney Gilstrap

JURY TRIAL DEMANDED

UNOPPOSED MOTION TO TRANSFER TO
THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION

Pursuant to 28 U.S.C. § 1404(a), Defendants International Business Machines Corporation (“IBM”) and SoftLayer Technologies, Inc. (“SoftLayer”) (collectively, “Defendants”) move to transfer this case to the Northern District of Texas, Dallas Division (“Northern District”). Plaintiff ZitoVault, LLC (“ZitoVault”) does not oppose this motion.

“For the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought” 28 U.S.C. § 1404(a). “[A] civil action for patent infringement may be brought in the judicial district where the defendant resides” 28 U.S.C. § 1400(b). Here, SoftLayer designed and developed technologies that ZitoVault alleges are relevant to this case in the Northern District, and IBM—in connection with its Bluemix-marketed products—uses SoftLayer’s Dallas datacenters, which incorporate these technologies, to host customer applications. Accordingly, both IBM and SoftLayer have purposefully directed activities to the

Northern District, are subject to personal jurisdiction there, and this action could have been brought there. *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 476 (1985). Transfer would therefore be proper.

Defendants also contend that the convenience factors weigh in favor of transfer because the majority of SoftLayer's relevant evidence is located at its headquarters in the Northern District (in Dallas) and because nearly all of SoftLayer's potential witnesses work in SoftLayer's headquarters in that district. In addition, Defendants contend that IBM's sources of proof are more easily accessed from the Northern District and that the Northern District is more convenient for IBM's potential witnesses. Finally, Defendants contend that the residents of the Northern District have a particularized interest in the subject matter of this lawsuit because, *inter alia*, SoftLayer is headquartered there in Dallas, developed the majority of the technology at issue there, and employs a large number of people residing there.

Further, this Court recently transferred another case filed by ZitoVault out of the Eastern District of Texas where ZitoVault asserted the same patent also at issue in this case. *ZitoVault, LLC v. Amazon.Com, Inc.*, Case No. 6:15-cv-152, Dkt. No. 72 (E.D. Tex. Dec. 7, 2015).

ZitoVault's position is that the Eastern District is both a proper and convenient venue and that the Northern District of Texas is not a clearly more convenient forum, but in the interests of compromise and to reduce expense and burden on the Court, ZitoVault does not oppose Defendants' motion to transfer venue to the Northern District.

For the foregoing reasons, Defendants respectfully request that, pursuant to 28 U.S.C. § 1404(a), the Court grant their unopposed motion to transfer this action to the Northern District of Texas.

A proposed order is submitted herewith.

DATED: March 11, 2016

Respectfully submitted,

By: /s/ Alexander Rudis

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CERTIFICATE OF SERVICE

I hereby certify that all counsel of record who have consented to electronic service are being served with a copy of this document via the Court's CM/ECF system per Local Rule CV-5(a)(3) on this 11th day of March, 2016.

/s/ Alexander Rudis

Alexander Rudis

CERTIFICATE OF CONFERENCE

I certify that I (counsel for Defendants) have conferred in good faith with ZitoVault's counsel, Hamad M. Hamad, to resolve the dispute raised in this motion. On March 2, 2016, I was informed by Mr. Hamad that ZitoVault does not oppose Defendants' Motion to Transfer Venue to the Northern District of Texas, Dallas Division.

/s/ Alexander Rudis

Alexander Rudis